

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SA CV 15-1592 AG (DFMx)	Date	December 12, 2017
Title	<i>In Re Experian Data Breach Litigation</i>		

Present: The Honorable	Jay C. Gandhi, United States Magistrate Judge
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Kristee Hopkins	None Appearing	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None Appearing

None Appearing

**Proceedings: (IN CHAMBERS) ORDER REGARDING SETTLEMENT
CONFERENCE**

The above-captioned matter has been referred to the Hon. Jay C. Gandhi, United States Magistrate Judge, for a settlement conference.

READ THIS ORDER CAREFULLY.

**THE JUDGE'S SETTLEMENT CONFERENCE MIRRORS THE
TRADITIONAL, COMPREHENSIVE MEDIATION AND THE PARTIES SHALL
PREPARE ACCORDINGLY.**

**THE PARTIES AND LEAD COUNSEL SHALL STRICTLY FOLLOW
THESE INSTRUCTIONS OR OTHERWISE SANCTIONS MAY BE IMPOSED.**

Accordingly, IT IS ORDERED as follows:

1. Date, Time, and Place

The parties and their lead trial counsel shall appear for a settlement conference on **January 26, 2018 at 10:00 a.m.**, in Courtroom 6A of the Ronald Reagan Federal Building and U.S. Courthouse, 411 West Fourth Street, 6th Floor, Santa Ana, California 92701. The parties and their lead trial counsel shall keep their schedule clear for the remaining part of the day. No party or counsel shall be excused absent leave from the Judge or until the settlement conference is adjourned. Violation of this policy may result in sanctions being imposed.

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2. Decision-Makers Must Be Present

The person with **full settlement authority** shall be present at the conference.¹ A person with full settlement authority is a person who retains power to change a settlement position by the events of the day and without consulting a superior. This requirement contemplates the physical presence of each party or, if a corporate or governmental entity, of an authorized and knowledgeable representative of the entity. If a proposed settlement must be presented for approval to a board, committee or other decision-making body, the person whose recommendation is normally followed must be the person present at the settlement conference. It is essential that everyone whose decision is necessary for settlement personally attend and participate in the settlement conference.

Counsel appearing without their clients (whether or not counsel purportedly have been given settlement authority) may result in sanctions being imposed. The noncomplying party, attorney, or both, may be assessed the costs and expenses incurred by other parties as a result of a cancellation and rescheduling.

3. Insurance Company Representative

Any insurance company that is contractually required to defend or to pay damages assessed within policy limits shall also have a settlement representative present at the conference. Such representative must have final settlement authority to commit the company to pay, **in the representative's discretion**, an amount recommended by the Judge within the policy limits. The purpose of this requirement is to have an insurance representative present who can settle the outstanding claim or claims during the course of the conference without consulting a superior. Counsel of record will be responsible for timely advising any involved non-party insurance company of the requirements of this Order.

¹This means that Local Rule 16-15.5(b) relating to appearance by parties residing outside the District does not apply (except to the United States or any of its agencies), *i.e.*, all parties, including those residing outside the District, must appear in person.

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4. Settlement Conference Statements

On or before January 19, 2018, each party shall submit a confidential mediation statement (or email) directly to the chambers of the Court at judge_gandhi_mediation@cacd.uscourts.gov. The Statements should not be filed with the Clerk of the Court, and they will not be made part of the case file. The Statements shall be in the form of a letter and shall not exceed ten (10) pages in length absent good cause.

The Statements **shall** contain the following information:

A. A brief statement of the facts of the case, including each party's claims and defenses. The Brief shall include citations to the applicable statutory or other grounds upon which claims or defenses are based. The Brief should identify the major factual and legal issues in dispute, and cite any controlling authorities.

B. An itemized statement of the monetary damages claimed and of any other relief sought, including the evidentiary bases for the monetary damages and/or other relief sought.

C. A summary of the proceedings to date, including any case management dates/deadlines already set, as well as the estimated length of trial, and whether a court or jury trial is contemplated. The Statement shall also set forth the date(s) any party filed or intends to file any dispositive motion.

D. A history of past settlement discussions, offers and demands.

E. A forthright evaluation of the party's likelihood of prevailing on each of his, her, or its claims and/or defenses.

F. The approximate amount of attorney's fees, time and costs expended to date, and an estimate of the fees, time and costs to be expended for (i) further discovery; (ii) pretrial; and (iii) trial.

G. The party's evaluation of the terms on which the case could be settled **reasonably and fairly**, taking into account the litigation position and settlement

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position of the other side.

H. Any other relevant circumstances that counsel believe will assist the Court in conducting the settlement conference.

5. At the Settlement Conference

The settlement conference will typically begin with a joint session attended by all participants. Parties and their counsel should come prepared to summarize their respective positions during this session. Parties and their counsel may utilize whatever presentation they believe most effective, including exhibits, charts, audiovisual, and/or oral presentations by counsel and/or principals. Bear in mind that the goal is not to prove a case, but to clarify your position to the decision-makers amongst the other parties while educating the Judge.

The joint session is followed by private confidential caucuses between the Judge and each party and counsel. In caucus, you can confidentially discuss information which may assist in working toward a resolution, but which you prefer not to disclose in direct negotiations. You should anticipate that the Judge will play “devil’s advocate” to help all parties gain the most balanced evaluation of the matter. The caucuses also provide an opportunity to assess realistic options for resolution.

Caucusing will generally continue until an option has been developed which all sides believe is acceptable. At the point, the Judge will summarize the settlement. You may then wish to place the settlement on the record or draft and execute a memorandum stating the material terms.

6. Confidential Communications

All statements related to the settlement conference, including all comments made in the joint session and caucuses, are confidential settlement discussions. All statements made or information disclosed are privileged and cannot be compelled under any circumstances. Further, the comments of the Judge during caucusing are not to be used by counsel in settlement negotiations with opposing counsel or in any court proceedings. This is a necessary requirement in order to avoid intentional or unintentional misquotation of the Judge’s comments. Violation of this policy may result in sanctions being imposed.

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7. Sanctions

The failure of any party or attorney to comply with the requirements of this Order may result in sanctions being imposed. The sanctions may include, but are not limited to, the fees and costs expended by the other parties in preparing and attending the settlement conference.

cc: Parties of Record

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